



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Jeff Hobday

### **H.B. 439**

132nd General Assembly  
(As Introduced)

**Reps.** Dever and Ginter

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### **BILL SUMMARY**

- Allows courts to impose conditions instead of setting monetary bail to ensure an accused person appears in court.
  - Requires courts to use a validated risk assessment tool before setting bail.
  - Eliminates the use of predetermined schedules for fixing the amount of bail.
  - Requires the courts to collect data and other information regarding the use of bail.
  - Authorizes the Criminal Sentencing Commission to monitor the policies and procedures of courts in setting bail and using pretrial supervision services.
  - Requires the Criminal Sentencing Commission to gather information from the courts of common pleas regarding bail, provide an annual report the General Assembly, and create a centralized database of sentence disposition information.
  - Requests the Supreme Court to create a model policy for pretrial supervision of defendants and amend the existing Rules of Criminal Procedure to conform to the changes in the bill.
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### **CONTENT AND OPERATION**

#### **Pretrial detention and release**

##### **Introduction**

This bill makes several significant changes to the procedure for setting bail: it requires the use of validated risk assessment tools, eliminates the use of predetermined

schedules for fixing the amount of bail, and allows courts to impose conditions instead of requiring monetary security to ensure a defendant appears in court. The bill also requires common pleas courts to report data regarding defendants released on bail to the Criminal Sentencing Commission for analysis. The Commission is required to provide an annual report to the General Assembly based on that information and create a centralized database of sentence disposition information.

## **Background**

Section 9, Article I, of the Ohio Constitution provides that all persons are eligible for release on bail "by sufficient sureties," except for two categories of defendants. The first excepted category includes persons who are "charged with a capital offense where the proof is evident or the presumption great." The trial court makes the determination as to whether a capital defendant should be admitted to bail.<sup>1</sup> The second excepted category includes every person who is "charged with a felony where the proof is evident or the presumption great *and* where the person poses a substantial risk of serious physical harm to any person or to the community." (Emphasis added.) Section 9 expressly states that the General Assembly "shall fix by law" standards to determine whether a person charged with a felony where the proof is evident or the presumption is great poses a substantial risk of serious physical harm to any person or the community. If a person is not in either of the excepted categories, the court must set bail, and, if the person satisfies the bail, he or she will be released from confinement.

## **Conditions of release as alternative to monetary forms of bail**

The bill provides that, as an alternative to the existing forms of bail, bail may take the form of any condition that the judge or magistrate determines is appropriate to ensure public safety and to ensure that the accused appears in court as required and does not depart without leave. Under current law, bail may take any of the following forms: a deposit of cash, a bond equal to the sum set by the court, or a written undertaking to forfeit bail if the accused does not appear for trial, which is known as a recognizance.<sup>2</sup> Rule 46 of the Ohio Rules of Criminal Procedure currently includes a list of conditions the court may impose, including house arrest, prohibiting contact with certain people, requiring drug or alcohol treatment, or restricting travel.

Current law provides that in all cases, bail must be fixed with consideration of the seriousness of the offense charged, the defendant's previous criminal record, and the probability of the defendant appearing at trial. The bill requires the judge,

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<sup>1</sup> *State ex rel. Reams v. Stuart*, 127 Ohio St. 314 (1933).

<sup>2</sup> R.C. 2937.22(A).



magistrate, or clerk who sets bail to first consider setting conditions for bail instead of requiring monetary security. The court must not require monetary security as bail if the amount is designed to keep the accused detained.<sup>3</sup>

Under the bill, a person is not required to pay the \$25 surcharge for bail if it is in the form of conditions without monetary security.<sup>4</sup> The bill modifies the definition of bail and makes other technical changes to the Revised Code referencing bail to account for the possibility of bail being set in the form of conditions rather than security for the appearance of an accused.<sup>5</sup>

### **Validated risk assessment tool**

The bill requires courts to use the results of a validated risk assessment tool in setting bail. The results of the risk assessment are to be considered in setting bail alongside factors listed in existing law, including the nature of the crime, the weight of the evidence, the accused's family ties, and whether the accused was on probation.<sup>6</sup> A "validated risk assessment tool" is defined as a risk assessment tool included in the Criminal Sentencing Commission's list of validated risk assessment tools (see "**Criminal Sentencing Commission: Additional responsibilities**").<sup>7</sup>

### **Elimination of bail schedules**

The bill eliminates the authority of courts to use predetermined schedules for determining bail. Under current law, in a case involving only a misdemeanor or a violation of a municipal ordinance, other than an assault on a peace officer, the judge, magistrate, or clerk of the court may fix the amount of bail and may do so in accordance with a schedule previously fixed by the judge or magistrate. If the magistrate, judge, or clerk of the court is not readily available, the law enforcement officer or jailer having custody of the person charged may set the amount of bail in accordance with a previously fixed schedule.<sup>8</sup>

Current law also permits a court to rely on a bail schedule in cases involving any of the following: a protection order violation; a sexually oriented offense or public

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<sup>3</sup> R.C. 2937.23(A)(4).

<sup>4</sup> R.C. 2937.22(B).

<sup>5</sup> R.C. 2903.212, 2935.15, 2937.22, 2937.23, and 2941.58.

<sup>6</sup> R.C. 2903.212(A), 2907.41(B), 2919.251(B), 2937.222(C), and 2937.23(A).

<sup>7</sup> R.C. 2907.41(D)(2), 2919.251(D)(3), 2937.222(E)(2), and 2937.23(C)(2).

<sup>8</sup> R.C. 2937.23(A)(2).



indecenty, in circumstances in which the person charged previously was convicted of or pleaded guilty to a sexually oriented offense, public indecenty, or a violation of an existing or former municipal ordinance or law of Ohio or any other state or the United States; or an offense of violence against a family or household member. However, a bail schedule must require that a judge consider a list of factors and may require judges to set bail at a certain level if the alleged offender's history or the circumstances of the alleged offense meet certain criteria in the schedule.<sup>9</sup>

As a result of eliminating schedules, the bill requires a judge, on the motion of the prosecuting attorney or on the judge's own motion, to hold a hearing to determine whether a person charged with any felony should be denied bail. Under current law, the hearing is only required when the offense charged is aggravated murder and not a capital offense, murder, a first or second degree felony, aggravated vehicular homicide, vehicular homicide when it is a felony, menacing by stalking when it is a felony, or a felony OVI offense.<sup>10</sup>

In any case in which the accused is held in lieu of bond and in which bail was set in accordance with a schedule, the bill requires a judge, magistrate, or clerk to set bail for the accused using a validated risk assessment tool as soon as the judge, magistrate, or clerk is readily available. Bail set by the judge, magistrate, or clerk after a risk assessment supersedes the bail set previously in accordance with a schedule.<sup>11</sup>

### **Information to be collected by courts**

The bill requires every court that sets bail to collect data on all of the following:<sup>12</sup>

- The rate at which defendants released on bail or under pretrial supervision cause physical harm to persons or property.
- The rate at which defendants released on bail or pretrial supervision fail to appear before the court as required.
- The rate at which the court accepts the recommendation of a pretrial service agency in setting bail.

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<sup>9</sup> R.C. 2903.212(B), 2907.41(C), 2919.251(C), 2935.15, and 2937.23(A)(2).

<sup>10</sup> R.C. 2937.222(A).

<sup>11</sup> R.C. 2937.23(A)(3).

<sup>12</sup> R.C. 2937.231(A).



In addition, every court is required to collect the following information about each criminal case handled by the court:<sup>13</sup>

- The dates of the defendant's arrest and final release.
- The case number and name of the court, judge, and offender.
- The city, county, and state of the offender's residence.
- All of the following for any offense that the offender is charged with committing:
  - The name of the offense, R.C. section that specifies the offense, and degree of the offense.
  - The validated risk assessment tool used to set bail, the risk score assigned to the offender, and the release recommendations.
  - Monetary bail amount set and whether a bail schedule was used.

## **Criminal Sentencing Commission**

### **Additional responsibilities**

In addition to the Criminal Sentencing Commission's existing duties, within 90 days of the bill's effective date, the bill requires the Commission to create a list of validated risk assessment tools that courts may use for the purpose of setting bail. The Commission must also do all of the following:<sup>14</sup>

- Monitor the policies and procedures of courts in setting bail and using pretrial supervision services.
- Collect all of the following information monthly, from the common pleas court of each county:
  - The number of individuals the court placed on probation that month.
  - The number of individuals whose probation was terminated during the month, differentiated by type of termination, including revocation and successful completion.

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<sup>13</sup> R.C. 2937.231(B).

<sup>14</sup> R.C. 181.27(A)(1) to (3).

- The number of individuals under supervision on probation at the end of the month covered by the report.

The Commission must report the information described above to the General Assembly by the last day of each even-numbered year.<sup>15</sup>

### **Centralized database of sentence disposition information**

The bill also requires the Commission to maintain a centralized database of sentence disposition information reported by municipal courts, county courts, and common pleas courts, including all of the following information about each criminal disposition: the date of the disposition, the case number, the name of the court, the judge's name, the offender's name, the city, county, and state of the offender's residence, and all of the following for any offense the offender is convicted of:<sup>16</sup>

- (1) The name of the offense;
- (2) The R.C. section that specifies the offense;
- (3) The degree of the offense;
- (4) Whether the conviction followed a trial or guilty plea;
- (5) The sentence imposed for the conviction and factors that contributed to that sentence, including the type and duration of the sentence, the risk score assigned to the offender, and the offender's criminal history.

The bill designates the Commission as a criminal justice agency in the maintenance of the centralized database and authorizes the Commission to apply for access to the computerized databases administered by the National Crime Information Center or Ohio's Law Enforcement Automated Data System (LEADS) and to other computerized databases administered for the purpose of making criminal justice information accessible to state criminal justice agencies.<sup>17</sup>

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<sup>15</sup> R.C. 181.27(A)(4).

<sup>16</sup> R.C. 181.27(A)(5).

<sup>17</sup> R.C. 181.27(B).



## Rules of procedure

The bill states that the General Assembly respectfully requests that the Ohio Supreme Court do both of the following:<sup>18</sup>

- (1) Provide, in the Rules of Superintendence, a model policy for the supervision of defendants released prior to trial.
- (2) Update the Rules of Criminal Procedure to conform the rules to the bill's changes to bail setting practices.

## Delayed effective date

The bill provides that its provisions regarding the Criminal Sentencing Commission and the collection of data and other information relating to bail (see "**Criminal Sentencing Commission**"<sup>19</sup> and "**Information to be collected by courts**"<sup>20</sup>) take effect "at the earliest time permitted by law," which would be 90 days after the act is filed with the Secretary of State. The other sections, as amended by the bill, take effect 90 days after the bill's effective date.<sup>21</sup>

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## HISTORY

ACTION	DATE
Introduced	12-07-17

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<sup>18</sup> Section 3.

<sup>19</sup> R.C. 181.27.

<sup>20</sup> R.C. 2937.231.

<sup>21</sup> Section 5.

